

§ 11.5

(1) The industry member sells, offers for sale, or contracts to sell to a trade buyer engaged in the sale of distilled spirits, wines, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis other than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or the agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages; and,

(2) If: (i) The sale, purchase, offer or contract is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in using the practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the sale, purchase, offer or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(d) of the Federal Alcohol Administration Act (27 U.S.C. 205(d)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

§ 11.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.11, Delegation of the Administrator's Authorities in 27 CFR Part 11, Consignment Sales. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Cen-

27 CFR Ch. I (4–1–07 Edition)

ter, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-44, 71 FR 16924, Apr. 4, 2006]

§ 11.6 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Administrator under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Administrator under this Act.

(b) *Examination and subpoena.* Any appropriate TTB officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate TTB officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995. Redesignated and amended by T.D. ATF-428, 65 FR 52021, Aug. 28, 2000]

Subpart B—Definitions

§ 11.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 11.31

of this part by TTB Order 1135.11, Delegation of the Administrator's Authorities in 27 CFR Part 11, Consignment Sales.

Exchange. The transfer of distilled spirits, wine, or malt beverages from a trade buyer to an industry member with other products taken as a replacement.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler or warehouseman and bottler, of distilled spirits.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Retailer. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

Return. The transfer of distilled spirits, wine, or malt beverages from a trade buyer to the industry member from whom purchased, for cash or credit.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

[T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20427, Apr. 26, 1995; T.D. ATF-428, 65 FR 52021, Aug. 28, 2000; T.D. TTB-44, 71 FR 16924, Apr. 4, 2006]

Subpart C—Unlawful Sales Arrangements

§ 11.21 General.

It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Trans-

actions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

§ 11.22 Consignment sales.

Consignment sales are arrangements wherein the trade buyer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer.

§ 11.23 Sales conditioned on the acquisition of other products.

(a) *General.* A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry member from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) *Exchange.* The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of "other" products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

§ 11.24 Other than a bona fide sale.

"Other than a bona fide sale" includes, but is not limited to, sales in connection with which the industry member purchases or rents the display, shelf, storage or warehouse space to be occupied by such products at premises owned or controlled by the retailer.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

§ 11.31 General.

(a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer to sell, or contract to sell products with the privilege of return for any reason, other than those considered to be "ordinary and usual commercial